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10/051,526	01/18/2002	Loren J. Veltrop		9277

7590

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EXAMINER

SPISICH, MARK

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

CP

# Office Action Summary

Application No.

10/051,526

Applicant(s)

VELTROP ET AL.

Examiner

Mark Spisich

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 4-8, 15, 18, 26-29 and 37 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31-35 is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 11-14, 16, 17, 19, 20, 22-24, 30, 36, 38, 39 and 41 is/are rejected.
- 7) ☒ Claim(s) 10, 21, 25 and 40 is/are objected to.
- 8) ☒ Claim(s) 1-41 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to the following patentably distinct species of the claimed invention: (1) Figs 1-8; (2) figs 9-15D; and (3) Figs 16-21.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is, for example, generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

**Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.** If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with John R. Hoffman on 2 June 2004 a provisional election was made with traverse to prosecute the invention of the species of figs 1-8, claims 1-3,9-14,16,17,19-25,30-33,35,36 and 38-41. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-8,15,18,26-29,34 and 37 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. **NOTE:** In view of the fact that claim 31 (which is generic to all three embodiments) has been deemed to be allowable, claim 34 has been rejoined and is also allowed.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Nos. 84 (as per page 10, line 10), 86 (as per page 10, line 13) and 88 (as per page 10, line 14). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Momcilovich (USP Des 232,344). '344 discloses a cooking grill scraper design comprising an elongated frame having a first handle (the downwardly extending portion at the extreme left in figure 3) extending downwardly from the head end at an obtuse angle to the longitudinal axis of the frame, a blade head supporting a blade (the upper right portion in figure 2 which is secured by what appears to be screws or rivets) and further including a second handle (the flange member at the junction of the frame and the blade head. The frame of '344 can reasonably be said to be narrow and generally planar (claim 13) and the ribs on the upper portion of the blade head (in figure 1) reasonably read on the "gusset means" of claim 16.

7. Claims 36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallerstein (USP 4,542,554). The patent to Wallerstein discloses a scraper (10) comprising a handle at an end of an elongated frame (21) and further including a head end remote from the handle and which head end includes a support plate (11) for mounting a blade (20) thereon, a clamping plate (18) and clamping means (41). '554 also discloses a shoulder (24) of claim 38.

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8. Claims 36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Chambers (USP 3,173,206). The patent to Chamber discloses a scraper (10) comprising an elongated frame having a handle (14) end and a from head end including a support plate (18) for mounting a scraping blade (20) thereon, a clamping plate (16) and a clamping means (22) and further including a should (24) which abuts a rear edge of the blade (claim 38).

9. Claims 36 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Negus (USP 5,208,984). The patent to Negus discloses a scraper (10) comprising a frame (14) with a handle (12) end and a head (16) end which head end includes a support plate (100), clamp plate (118) which includes means (86) for biasing the clamping plate. The rear edge (142) of the clamping plate reads on the "splash guard" insofar as this element is structurally defined in claim 41.

10. Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Toth (USP 3,195,232). The patent to Toth discloses a scraping device (10) comprising an elongated frame (11a,11b), a blade head (34) for mounting a blade (38), first handle (48), second handle (68) and a hand guard (64).

11. Claims 23,24 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Galipeau (USP 713,979). The patent to Galipeau discloses a scraper comprising a frame (a), blade head (d and the lower portion of b) for mounting a blade (c), a first handle (a'), a second handle (a2) and wherein the upper portion of "b" reads on the 'hand guard' as defined in claim 23. With regard to claim 24, the "guard" (the upper portion of "b") does narrow or taper. The recitation that the distal end thereof is narrow

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is a relative term. Applicant may wish to recite that the distal end is narrower than the second handle. With regard to claim 36, the patent o Galipeau discloses a blade head including a support plate (b), a clamping plate (d) and a clamping means (d3).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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13. Claims 1-3, 11-13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galipeau (USP 713,979) in view of Grinnell et al (USP des 235,965). The patent to Galipeau discloses a scraper comprising a frame (a), a blade head (b,d) for mounting a blade (c), first handle (a1) and second handle (a2). The patent to Galipeau discloses the invention of claim 1 with the exception of the the first handle extending downwardly at an obtuse angle to the axis of the frame. The patent to Grinnell discloses a scraper which has a handle at an end thereof which is so oriented. It would have been obvious to one of ordinary skill to have modified the first handle of Galipeau as such in that it would be easier to apply a force in the axial direction of the frame. The upper portion of "b" reads on the recited hand guard (claims 2-3). The first handle (a1) of Galipeau includes an enlarged distal end (claim 11), the second handle (a2) is in the form of a rounded knob (claim 12) and the frame (a) is narrow and generally planar (claim 13). Galipeau discloses a support plate (b), clamping plate (d) and clamping means (d3) (claim 17).

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14. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Momcilovich (USP Des 232,344) in view of Brower (USP 1,523,579). The patent to Momcilovich discloses the invention substantially as claimed (see paragraph #6) with the exception of the frame being a wire form. The patent to Brower discloses a scraper wherein the frame (14,15) thereof is formed of wire (page 1, lines 30-33). It would have been obvious to one of ordinary skill to have modified the frame of Momcilovich as such in that such a frame could even be made by hand as opposed to requiring molding or casting.

15. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers (USP 3,173,206) in view of EP 3,379. The patent to Chambers discloses the invention substantially as claimed with the exception of the shoulder being at an angle with respect to the scraping edge of the blade. '379 discloses an angled scraping edge (fig 1A) as well as a straight scraping edge (fig 3A) and teaches that the angling may be provided by forming the front and rear edges of the blade at an angle. It would have been obvious to one having ordinary skill in the art to have modified the device of Chambers as such as it would accomplish the same angling of the scraping edge (26) without angling the entire head assembly.

16. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Momcilovich (USP Des 232,344) in view of Wilson (USP 4,890,351). The patent to Momcilovich discloses the invention substantially as claimed with the exception of the splash guard at a rear edge of the head (it is more at a front edge thereof). The patent to Wilson discloses a similar device (grill scraper) wherein a guard (33) is provided



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spaced from the scraping edge. It would have been obvious to one of ordinary skill to have modified the location of the guard of Momcilovich as such so that the guard would be located closer to the user's hand.

17. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Momcilovich (USP Des 232,344) in view of Chambers (USP 3,173,206). The patent to Momcilovich discloses the invention substantially as claimed with the exception of particular means of securing the blade. The patent to Chambers discloses securing a blade being a support and clamping plate. It would have been obvious to one of ordinary skill to have modified the device of Momcilovich as such in that it is shown to be an art-recognized equivalent means for removable securing a scraping blade.

18. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Momcilovich (USP Des 232,344) and Chambers (USP 3,173,206) and further in view of EP 3,379. The prior art discloses the invention substantially as claimed with the exception of the front edge of the blade being at an angle to the rear edge. It would have been obvious to one of ordinary skill to have modified the prior art (in view of '379) for the same reason set forth in paragraph #15 above.

19. Claims 1, 17 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Negus (USP 5,208,984) in view of Hartman (USP Des 381,483) and Grinnell (USP 235,965). The patent to Negus discloses a scraper (10) comprising a frame (14) with a first handle (12) at one end and a blade head (16) at a second end for securing a blade (154). The patent to Negus discloses the invention substantially as claimed with the

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exception of (1) the first handle at an obtuse angle and (2) the second handle. The patent to Grinnell discloses an "obtuse" handle. It would have been obvious to one of ordinary skill to have modified the handle (12) of Negus as such so that it would be easier to apply a forward force to the blade. With regard to the second handle, it is fairly well known in the scraper art to provide a second handle, as is shown by Hartman. It would have been obvious to one of ordinary skill to have provided such a second handle to Negus so as to provide better control thereof. Negus discloses the support and clamping plates (see fig 2) and further wherein the rear edge (142) of the clamping plate at least structurally reads on the "splash guard" as defined in claim 22.

20. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Galipeau (USP 713,979) in view of Toth (USP 3,195,232). The patent to Galipeau discloses the invention substantially as claimed, including the top portion of the head (b) which reads on the "hand guard" of claim 23 and fails only to disclose the splash guard. The patent to Toth discloses a scraper (10) provided with a guard (64). It would have been obvious to one of ordinary skill to have provided such a guard to the device of Galipeau to protect the user's hand.

#### ***Allowable Subject Matter***

21. Claims 31-35 are allowed.

22. Claims 10,21,25 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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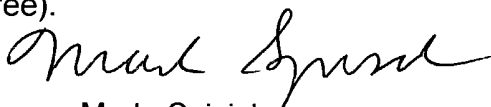
**Conclusion**

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. CA '715, Carlson, Soldani, Cortelyou, Duddy, Wallerstein '093 and Chase are pertinent to the support/clampinf plates, Bergmann, DE '604, GB '900, Hall and Cary to the "angled" handle, Panfili to the second handle, Werner to the guard and Lamb to the "lost motion".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich  
Primary Examiner  
Art Unit 1744